IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.02.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR

and

THE HONOURABLE MR JUSTICE A.KULASEKARAN

Criminal Appeal No. 709 of 1996

State by Public Prosecutor,
High Court, Madras. ... Appellant.

Vs

Ponnusamy ... Respondent/Accused

Prayer: Appeal against the judgment passed by the learned Additional Sessions Judge, Erode, in S.C.No. 193 of 1992 dated : 29.9.1994.

For Appellant : Mr.V.M.R.Rajendran
Addl. Public Prosecutor.

For Respondent : Mr.A.K.Kumarasamy

JUDGMENT

(Judgment of the Court was delivered by N. DHINAKAR,J)

The appellant is the State. The respondent was tried before the learned Additional Sessions Judge, Erode, on the allegation that at 2.30 p.m. on 7.1.1992, he caused the death of Sivaraj, who hereinafter will be referred to as "D-1" and Kanniammal, who hereinafter will be referred to as "D-2", by cutting them with axe and that he also committed theft of nose screws belonging to Kanniammal, D-2. Three charges were framed and two of which were under Section 302 IPC. for causing the death of D-1 and D-2 and the other is under Section 404 IPC. for removing the nose screws. The respondent

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was acquitted of all the charges, which is being challenged in this appeal.

2. The facts necessary to dispose of the appeal are as follows:-

P.W.1 is the father of D-1 and D-2 is the wife of P.W.2 and she is the sister-in-law of P.W.1. At about 9.00 a.m., D-1 left the house taking along with him the goats for grazing and he was accompanied by D-2. At about 6.00 p.m., P.W.1 was invited by three of his friends and while they were going to Bannari Temple, they saw the dead bodies of D-1 and D-2 with cut injuries. In the meantime, 10 or 20 villagers have also gathered. A woman by name, Pappa, informed them that on the previous day, one Mohan, a Forest Guard, misbehaved with her and he could have committed the offence. Therefore, P.W.1 and others went to the house of Mohan and found Mohan with injuries on his face. Watcher, Subban, was also there. When the villagers questioned them, both of them informed that the villgers can do anything they want. Therefore, P.W.1 accompanied by P.W.2 went to the Office of the Village Administrative Officer, P.W.14, and gave a complaint, which was recorded by P.W.14 and the same stands marked as Ex.P-23. P.W.14 took the complaint, Ex.P-23, to Sathiyamangalam Police Station and handed over the same to P.W.17, the Sub Inspector of Police, who registered a case in Crime No.3 of 1992 against unknown accused. The printed first information report is Ex.P-30 and investigation in the case was taken up by P.W.18, Circle Inspector of Police, Sathiyamangalam Police Station.

3. P.W.18, on taking up investigation in the crime, proceeded to Sathiyamangalam Police Station, and reached it at 2.15 a.m. on 8.1.1992, where he was given a copy of the first information report. He proceeded to the scene of occurrence accompanied by P.W.17 and P.W.14, the Village Administrative Officer as well as the other Police Constables. He also sent a requisition to the Sniffer Dog Squad to go over to the scene of occurrence. P.W.18, at 6.00 a.m., prepared an observation mahazar, Ex.P-25, where the dead body of D-2 was lying. At 6.30 a.m., he prepared an observation mahazar, Ex.P-26, where the dead body of D-1 was lying. He drew a rough sketch, Ex.P-31. P.W.10, the photographer, took photographs of the dead bodies. The inquest over the dead body of D-2 was conducted between 7.00 a.m. and 9.30 a.m. and the inquest report is Ex.P-32. On the dead body of D-1, inquest was conducted between 9.30 a.m. and 11.00 a.m. and the inquest report is Ex.P-33. P.Ws.1, 2 and others were questioned during inquest and their statements were recorded. After the inquest, the bodies were handed over with two requisitions, Exs.P-15 and P-16, for conducting autopsy.

4. On receipt of the requisitions, P.W.13, Assistant Resident Medical Officer attached to Government Hospital,

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Sathiyamangalam, conducted autopsy on the dead body of D-1 and found the following injuries:-

1. A cut injury on the right side of the neck measuring 5x4x4 cms. On dissection, he found that the sterno-mastoid muscle was cut.

2. A lacerated injury on the parietal bone measuring 7 x 3 cm x bone depth and on internal examination, the parietal bone was found fractured.

3. An incised wound measuring 2.5 x 0.5 cm on the back of neck.

4. An incised injury on the left side of neck near mastoid bone measuring 0.5x0.5x2 cms with the depth of 2 cms.

The doctor issued Ex.P-21, the post-mortem certificate, with his opinion that the deceased (D-1) died on account of shock and haemorrhage due to the injuries about 18 to 26 hours prior to post-mortem.

5. The post-mortem over the dead body of D-2 was conducted by P.W.12, the Assistant Surgeon attached to Government Hospital, Sathyamangalam, who found the following injuries:-

1. An irregular lacerated injury measuring 5x3 cms with bone depth on the forehead. On dissection, the right frontal bone was found fractured.
2. An incised wound measuring 7x5x5 cms on the right side of the back of neck. On dissection, C-5 and C-6 vertebrae were found fractured.

3. An irregular lacerated injury measuring 3x2 cms with bone depth on the right side of the back of head and on dissection, no fracture was seen.

4. A linear contusion measuring 27 cms on the right thigh and on dissection, blood clots were noticed.

The doctor issued Ex.P-14, the post-mortem certificate, with his opinion that the deceased (D-2) would have died on account of shock and haemorrhage about 18 to 26 hours prior to autopsy.

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6. P.W.18, in the meantime, seized blood-stained earth, M.O.27, and sample earth, M.O.28, and M.Os.29 to 32, from the place, where the dead body of D-2 was lying, under a mahazar Ex.P-27 attested by P.W.14. He also seized M.Os.38 to 41 from the same place under a mahazar Ex.P-29 attested by the same witnesses. M.Os.33 to 37 were seized from the place, where the dead body of D-1 was lying, under a mahazar Ex.P-28 attested by witnesses. The officer took steps to trace the accused, but he could not get any information. On 9.1.1992, he examined P.W.3 and other witnesses. He examined P.Ws.12 and 13, the two doctors, and recorded their statements. On examining one Maniyal, daughter of Sriranga Gounder, he came to know that the nose screws of D-2 were stolen and therefore, an offence under Section 379 IPC. was added to the crime and a special report, Ex.P-34, was sent to Court on 9.1.1992. On 10.1.1992, he questioned P.Ws, 10, 15, 16 and others, whose statements were recorded. On 11.1.1992, 12.1.1992 and 15.1.1992 he searched for the accused, but could not get any information. On 14.1.1992, on the directions of the Superintendent of Police, he handed over investigation to P.W.19.

7. P.W.19, on taking up investigation from P.W.18 on 14.1.1992, examined P.W.8 and other witnesses and on 15.1.1992, went to Bannari forest, where he examined P.Ws.4, 9, 10 and others. At 2.15 p.m. on the same day, he went to the tea stall of P.W.9, where the respondent was working, and seized M.O.2, a towel, under a mahazar Ex.P-1 attested by witnesses. On 16.1.1992, he proceeded to Sathiyamangalam-Thimman road and at Bannari forest, arrested the respondent and he gave a statement in the presence of P.W.9. The admissible portion of the said statement is Ex.P-2. In pursuance of the said statement, Ex.P-2, the respondent took the police party to the forest and produced M.O.3, an axe, and M.O.4, a shirt. They were seized under a mahazar Ex.P-3. At 5.45 p.m., he took the police party to a tree and from the hole in the tree, produced M.O.1 series, nose screws, which were seized under a mahazar Ex.P-14. The nose screws were identified by P.Ws.2 and 3 at the police station. Their statements were recorded. The respondent was sent to hospital with a requisition to examine him and accordingly, he was examined by the doctor for his potency. After the examination, the respondent was sent to Court for remand. He gave a requisition under Ex.P-35 to the Court to send the material objects for analysis and the Court, by forwarding them, obtained Ex.P-37, the report of the Chemical Analyst and Ex.P-38, the report of the Serologist. He gave a requisition to Judicial Magistrate, Erode, to record the statement of the respondent/accused under Section 164 Cr.P.C.

8. On receipt of the requisition, P.W.11, Judicial Magistrte, Erode, directed the jail authorities to produce the

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respondent before him and accordingly, he was produced on 21.1.1992. He was questioned and after satisfying that the respondent is in a mood to confess, sent him back to the jail with a direction to the jail authorities to keep him in a separate cell so as to enable the respondent to reflect and with a further direction to produce the respondent before him on the next day. Accordingly, on 22.1.1992, the respondent was produced before P.W.11 at about 2.45 p.m. with Ex.P-6, the report of the jail authorities that the respondent was detained in a separate cell. P.W.11, after following the procedure, questioned the respondent and he gave a statement. Ex.P-7 are the proceedings of the learned Magistrate containing the statement of the respondent and Ex.P-8 are the proceedings of P.W.11 dated 21.1.1992 and Ex.P-9 are the proceedings dated 22.1.1992 and Ex.P-10 is the statement given by the respondent. The learned Magistrate corrected the words "கம்மல" by scoring it off and the said correction is marked as Ex.P-11. He has also made his note under Ex.P-11 stating that he has corrected by scoring the words "கம்மல்" (ear rings), which was written by mistake, and Ex.P-12 is the certificate given by P.W.11.

9. P.W.19 handed over investigation back to P.W.18 on 25.1.1992, on the orders of the Superintendent of Police and P.W.18, on taking up investigation from P.W.19 on 27.1.1992, questioned P.W.12 and recorded his statement. After the completion of investigation, he filed the final report against the respondent.

10. The respondent was questioned under Section 313 the Cr.P.C. on the incriminating circumstances. He denied all the incriminating circumstances. He filed a written statement, in which, he has stated that he was not arrested as claimed by P.W.19 near a temple at Bannari and that he did not produce the axe, the nose screws and other materials. He has also stated that he did not give any confession statement voluntarily before P.W.11 and that the said statement was given by him on account of the threat given to him by P.Ws.18 and 19. He has further stated that the real assailants were identified by the sniffer dog, but since they were employees of the Forest Department, they were let off and a false case had been foisted upon him. He examined D.W.1 to state that the respondent was working in the tea stall of P.W.9 and that he was taken into custody three days after the incident by the police. D.W.2 was examined to say that on the date of incident, while she was grazing cattle and goats, she saw D-1 and D-2 in the forest. She has also stated that she found the Forest Guard, Mohan, holding the hands of D-2 and on seeing this, she ran away from the place along with her friend, Shanthi, and informed the same to the villagers. According to her, the villagers came to the scene of occurrence and found the dead bodies of D-1 and D-2 and that thereafter, a sniffer

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dog was brought, which went to the house of Mohan, the Forest Guard. According to her, she was also taken to the police station, where Mohan, the Forest Guard, was brought and questioned. D.W.3 was examined to show that he took the sniffer dog, Rambo, in connection with Crime No.3 of 1992 to the scene of occurrence and the said sniffer dog went into the forest and stood in front of the house of the Forest Guard, Mohan, and that thereafter, he returned to the Headquarters with the dog. Ex.D-4 is the letter addressed by P.W.18 to the Assistant Commissioner of Police, wherein P.W.18 has stated that the sniffer dog had gone to the house of the Forest Guard, Mohan, and after going around the house two times, it stood there and the said document was marked through D.W.4.

11. The learned Additional Public Prosecutor submits that the trial Judge was not justified in acquitting the respondent in the background of the evidence of P.W.3, who had seen D-2 in the company of the respondent and that thereafter, she was not seen alive. The Additional Public Prosecutor further submits that M.O.1 series, nose screws, were recovered at the instance of the respondent and therefore, the trial Court ought to have accepted the prosecution version and the acquittal of the respondent is bad in law. On the above contentions, we have heard the learned counsel appearing for the respondent.

12. The cause of death of D-1 and D-2 stands established through the doctors, P.Ws.12 and 13. The cause of death is also not disputed by the respondent. On the medical evidence, we, therefore, hold that D-1 and D-2 died on account of homicidal violence.

13. Before the trial Court, the prosecution wanted to establish the case by relying upon circumstantial evidence, as the occurrence was not witnessed by anyone. The first circumstance was sought to be established through the evidence of P.W.3. P.W.3 is the wife of one Subban, an employee of the Forest Department. According to her, she had seen the respondent and D-2 on the date of incident at about 2.30 p.m. and that D-2 and the respondent were seen going into the Forest. It is the case of the prosecution that after D-2 was seen alive by P.W.3, she was not seen by anyone and that her dead body was seen by P.W.1, who was proceeding to Bannari along with his friend. When P.W.3 was cross-examined, she has admitted that she did not see the respondent's face and only she saw his back. She has also admitted that when she was examined during investigation, she did not tell the officer that she saw the respondent along with D-2. This shows that P.W.3 never had a case during investigation that she saw the respondent and D-2 together on the date of incident and the present evidence is not only an improvement, but is a fresh case put forth by her for the first time in the Court. She has denied that her husband, Subban, and Mohan, another

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employee of the Forest Department, were detained by the police.

14. In the background of the evidence of P.W.3 and the suggestion made to her, when we look at the evidence of P.W.5, who was examined by the prosecution to show that Mohan was on duty on 7.1.1992, it could be seen that the prosecution did not succeed in establishing the said fact. In cross-examination, P.W.5, though has stated that he gave orders to Mohan to make enquiries as to the missing of elephant tusk and that he has to go for raid, has admitted that he has not passed any written orders to that effect. He has also admitted that if records are summoned from the office, it will show as to the duties assigned to the Forest Guard, Mohan, and to other employees of the Forest Department. The prosecution did not summon any of the documents from the Forest Department to show that actually Mohan was assigned the duty to trace the missing elephant tusk and to go for a raid. He has also admitted in cross-examination that he did not inform the investigating officer that he came to know that Mohan had gone to Bannai by travelling in a bus and that he also came to know that on 7.1.1992 Mohan was drunk and that he did not initiate any steps against him. In this connection, the evidence of P.W.7 also assumes importance. He was a driver of a private bus, in which, Mohan travelled on the date of incident and according to P.W.7, Mohan was fully drunk, when he was travelling in the bus.

15. The evidence of P.W.2, when perused, shows that the complaint, Ex.P-1, was not actually given by P.W.1, but the thumb impression of P.W.1 was taken by P.W.17, the Inspector of Police. He has further admitted in the cross-examination that since the police officers did not take any action against the real culprit, they conducted road roko and that thereafter, on the orders of the Deputy Superintendent of Police, a sniffer dog was brought, which, after visiting the scene of occurrence and sniffing the two dead bodies, ran to the house of Mohan and stood there, from where, the axe, the nose screws and some clothes were recovered by the police officers and that he identified the clothes as clothes belonging to his wife, who is D-2 in the case. He has further stated in the cross-examination that he and the other villagers complained to the Member of the Legislative Assembly about the dishonest investigation that was being conducted by the investigating agency and finally concluded in the cross-examination by admitting that the respondent has no connection with the case and that he was threatened by the Inspector of Police not to give any evidence against Mohan and Subban, the Forest Officers.

16. The last piece of evidence is the recovery. Though according to P.W.18, he came to know, on examining one Maniyal, daughter of Sriranga Gounder, on 9.1.1992 that D-2

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was wearing nose screws on the date of incident and he sent a special report, Ex.P-34, the prosecution did not choose to examine the said Maniayal. In fact, in the complaint, Ex.P-23, given by P.W.1, it is not found mentioned that D-2 was wearing nose screws on the date of incident. The non examination of Maniyal, and the absence of any averment in the complaint that D-2 was wearing nose screws on the date of incident, when looked it in the background of the evidence as regards the recovery, it creates a doubt whether the prosecution had come out with a true version. We have also adverted to the evidence of P.W.2, the husband of D-2. He has not only stated that the sniffer dog went to the house of Mohan and Subban and that they resorted to road roko, but also stated that Mohan and Subban were taken to custody on the same day and M.O.1 series were also shown to them and that later, Mohan and Subban were let off, which means that even on 8.1.1992, the sniffer dog reached the scene of occurrence and after sniffing the two dead bodies, went to the house of Mohan and that M.O.1 series were shown to them and that Mohan and Subban were detained by the police. M.O.1 series were shown to P.W.2, who identified it to be the jewels belonging to his wife; but the prosecution strangely, through the evidence of P.W.18, came out with the version that only on 9.1.1992, he came to know through Maniyal, who was not examined, that D-2 was wearing the nose screws, when she met her end.

17. In the above background, we do not attach any importance to the evidence as regards the recovery and finally coming to the confession, Ex.P-10, alleged to have been given by the respondent to P.W.11, we feel that the said confession must have been given by the respondent on being threatened by the police officers as stated by the respondent in his written statement filed under Section 313 Cr.P.C. P.W.11, the Judicial Magistrate, in his evidence, has stated that the respondent, while narrating the incident, mentioned the word "கம்மல்" and later, after the completion of narration, informed the Judicial Magistrate that he did not mention the word "கம்மல்" and therefore, it was struck off. It is nobody's case that the ear rings, which were on the dead body of D-2, were removed by the assailant, as it was found on the ears of D-2. If the assailant had taken the trouble of removing the nose screws, then, there could not have been any difficulty for the said assailant to have removed the ear rings also. Therefore, it becomes highly doubtful, whether M.O.1 series, nose screws, were removed from the dead body of D-2 and the statement of the respondent to P.W.11, Judicial Magistrate, Erode, mentioning that he has removed the ear rings and later, going back on the said statement, shows the confused state of mind, in which the respondent was in, when he gave the statement to the Judicial Magistrate and the confused state of mind, therefore, indicates that in all probabilities, the respondent would have given the statement on account of threats given by

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P.Ws.18 and 19. In the absence of any other material and in the absence of any statement about the missing of nose screws either in the complaint or in the evidence and in the background of the non-examination of Maniyal from whom, according to P.W.18, he came to know that D-2 was wearing the nose screws and in view of the admission of P.W.2, the husband of D-2, that M.O.1 series were shown to him even on 8.1.1992 after Mohan and Subban were taken into custody, create a doubt that all is not well with the prosecution and no importance can be attached to the statement, Ex.P-10, given by the respondent, as a statement given by him without any threat or coercion. We, therefore, reject the said confession, as it was not a confession given by a man with free mind and it was also not voluntary in nature.

18. We have to remember that this is an appeal against acquittal and if two views are possible and if the said views are not perverse, the Appellate Court cannot substitute its views with the views of the trial Court by holding that another view in favour of the prosecution could also be taken.

19. In the background of the discussion made above, and in view of the settled principles of law, and on the reasons given by the learned trial Judge, we find no reason to interfere with the order of acquittal except to state that the investigating agency acted in a dishonest manner with a view to screen some of the officials of the Forest Department, and it was also condemned by the trial Court in no uncertain terms. We approve the views expressed by the trial Court as regards the investigation conducted by the investigating agency in the case and we hope and trust that in future, the officers concerned, who conducted investigation in grave offences like murder, do not try to shield the real culprits on the only ground that they happened to be Government Officials and rope in some ignorant and illiterate persons as accused, so that they can improve the statistics in their police stations as regards the detection of crimes and claim credit and medals from the Government.

20. The appeal is dismissed with the above observations.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Additional Sessions Judge, Erode,Periyar District.
2.-do- through the Principal Sessions Judge, Erode.
3.The Judicial Magistrate, Sathyamangalam
4.-do- Through The Chief Judicial Magistrate , Erode.
5.The Inspector of Police, Sathiyamangalam Police Station, Erode.
6.The District Collector, Erode District.
7.The Director General of Police, Madras.
8.The Public Prosecutor, High Court, Madras.(3 Copies)

JRG (CO)
km/9.2.

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